IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6073 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH RAMANBHAI PRAJAPATI

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The order of detention dated 18/5/2000 passed by the Commissioner of Police, Ahmedabad City in exercise of powers conferred on him by sub-section (2) of section 3 of the Gujarat Prevention of Anti-Social Activities, Act,

1985 ('the Act' for short) against the detenu is subject matter of challenge in the present petition which is filed under Article 226 of the Constitution of India.

2. The order of detention was executed on May 18, 2000. The grounds of detention were communicated to the detenu immediately as required by section 9 of the Act. The detaining authority had also submitted his report to the State Government as contemplated by section 3 (3) of the Act. On receipt of the report from the detaining authority, the State Government had approved the order of detention within 12 days from the date of making of it. The case of the detenu was referred by the State Government to Advisory Board together with grounds of detention and other relevant materials. The Advisory Board has considered the materials placed before it and reported in its opinion that there was sufficient cause for detention of the detenu. On receipt of the report from the Advisory Board, order of detention was confirmed by the State Government and the State Government has continued the detention of the detenu.

3. From the grounds of detention it is apparent that the detaining authority has taken into consideration cases registered against the petitioner under Chapter XVII of the Indian Penal Code with Bapunagar Police Station, Ahmedabad and Naroda Police Station, Ahmedabad in order to form subjective satisfaction that the petitioner is a dangerous person within the meaning of section 2 (c) of the Act. The grounds of detention further indicate that the detaining authority has taken into consideration statements of two witnesses in order to reach the subjective satisfaction that the activities of the detenu as a dangerous person disturbed maintenance of public order and, therefore, it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to maintenance of public order.

4. Though several grounds have been urged by the learned counsel for the petitioner for challenging the detention order, it is not necessary to refer to all of them except one which in my opinion merit acceptance.

5. The learned counsel for the petitioner submitted that the detaining authority has wrongly exercised the power u/S. 9(2) of the Act and as by such wrong exercise of powers, the right of the detenu to make effective representation guaranteed under Article 22 (5) of the Constitution of India has been infringed, the order of detention should be set aside. Elaborating this submission the learned counsel pointed out that the

statements of two witnesses were recorded by Police Inspector on May 16, 2000 which were verified by the detaining authority on May 17, 2000 and as on next day the order of detention was passed, the exercise of power u/S. 9(2) of the Act should be held to have been vitiated because of non-application of mind. In support of this submission the learned counsel has placed reliance on the decision of Division Bench of this Court rendered in Kalidas C. Kahar v/s. State of Gujarat reported in 1993 (2) G.L.R. 1659.

6. It may be stated that the detaining authority has not filed any reply controverting the averments made in the petition. From the record of the case it is evident that the statements of two witnesses which are relied upon by the detaining authority were recorded by the Police Inspector, PCB, Ahmedabad on May 16, 2000 and proposal to detain the detenu also appears to have been made on the same day. The record further shows that these two statements were verified by the detaining authority on May 17, 2000 and thereafter the impugned order of detention was made on May 18, 2000. It is rather curious that the entire bunch of materials was supplied by the sponsoring authority at the time of making the proposal to detain the detenu and that has been promptly accepted by the detaining authority which passed the order of detention on the next day of verification of statements. At the time of exercising the privilege u/S. 9(2) of the Act a balance is required to be struck between the public interest on one hand and the right of the detenu to make a representation under Article 22 (5) of the Constitution on the other. When the statements of witnesses are sought to be relied upon the right of the detenu to point out that persons whose statements are recorded are fictitious persons and/or that their statements are bogus statements should not be ignored. Though section 9(2) of the Act empowers the detaining authority to withhold disclosure of facts which it considers to be against the public interest, the power has to be exercised after striking a balance between the public interest and right of the detenu to make representation guaranteed under Article 22 (5) of the Constitution. Looking to the facts and circumstances of the case, it is clear that there was no sufficient time for the detaining authority to examine the possibility of exercising the power u/S. 9(2) of the Act as the proposal was made on May 16, 2000 whereas so called verification of the statements was made on May 17, 2000 and order of detention was passed on next day. Similar view is taken by the Division Bench in Kalidas C. Kahar's case (supra). Under the circumstances, I am of

the view that the detaining authority has wrongly exercised power u/S. 9(2) of the Act which has affected the detenu's right of making an effective representation under Article 22 (5) of the Constitution of India vitiating the continued detention of the detenu.

6. For the foregoing reasons, the petition succeeds. The order of detention dated May 18, 2000 passed by the Commissioner of Police, Ahmedabad city, which is produced at Annexure-A to the petition is quashed and set aside. The respondents are directed to release the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs. DSP.

* * *

PVR.